



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0460]

RIN 1625-AA00

**Safety Zone; Detroit River Days Air Show, Detroit River,
Detroit, MI**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Detroit River in the vicinity of Detroit, MI. This zone is intended to restrict and control movement of vessels in a portion of the Detroit River.

This zone is necessary to protect spectators and vessels from potential hazards associated with the Detroit River Days Air Show.

DATES: This temporary final rule is effective from 12:30 p.m. on June 24, 2016 until 6:30 p.m. on June 26, 2016.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2016-0460

and are available online by going to www.regulations.gov, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Petty Officer Todd Manow, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9508, e-mail Todd.M.Manow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NAD 83	North American Datum of 1983
NPRM	Notice of Proposed Rulemaking
U.S.C	United States Code

II. Background Information and Regulatory History

On February 10, 2016, the Tuskegee Airmen National Historical Museum submitted an application for a marine

event for an aerial display spanning three days in conjunction with the Detroit River Days Festival on June 24, 25, and 26, 2016. A safety zone is required by the Federal Aviation Administration to separate aircraft from persons and property on the ground or water's surface for all air shows. For the purposes of this event, the Coast Guard is establishing a safety zone around the proposed flight path and a standoff zone between the flight path and the shore, matching the safety zone created for this same event in 2015 [USCG-2015-0491].

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. Having reviewed the application for a marine event submitted by the sponsor on February 10, 2016, the Captain of the Port Detroit (COTP) has determined that an aircraft aerial display proximate to a gathering of watercraft poses a significant risk to public safety and property. Such hazards include potential aircraft malfunctions, loud noise levels, and waterway distractions. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during

this event.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because waiting for a notice and comment period to run would be impracticable, unnecessary, and contrary to the public interest. Although an initial marine event application was submitted on February 10, 2016, final details regarding event area and patrol parameters were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying the effective date of this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards

associated with this air show.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

IV. Discussion of the Rule

This rule establishes a safety zone on U.S. waters of the Detroit River, Detroit, MI, from a point on shore in Milliken State Park at 42°19.87'N, 083°01.65'W, proceeding South-Southeast approximately 450 yards to a point mid-river corresponding with the international boundary at 42°19.67'N, 083°01.57'W, then proceeding approximately 1.3 miles West-Southwest along the international boundary to a point mid-river at 42°19.28'N, 083°03.03'W and then proceeding to a point on shore just west of the Joe Lewis Arena at 42°19.45'N, 083°03.17'W, and then following the U.S. bank of the Detroit River upstream to the point of origin (NAD 83).

Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or his on-scene representative on a case-by-case basis. The

COTP or his on-scene representative may be contacted via VHF Channel 16 to coordinate vessel transits during the enforcement period.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.) related to rulemaking. Below we summarize our analyses based these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this

rule will be relatively small and enforced for a relatively short duration, and is designed to minimize the impact on navigation. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the COTP on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of the Detroit River from 12:30 p.m. to 6:30 p.m. on June 24, 25 and 26, 2016.

This safety zone will not have a significant economic

impact on a substantial number of small entities for the reasons cited in the Regulatory Planning and Review section. Additionally, before the enforcement of these zones, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above. The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Tribal Implications

A rule has implications for federalism under E.O.

13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this

rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

K. Energy Effects

This action is not a "significant energy action" under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0460 to read as follows:

§ 165.T09-0460 Safety Zone; Detroit River Days Air Show, Detroit River, Detroit, MI.

(a) Location. The following area is a temporary safety zone: All U.S. waters of the Detroit River, Detroit, MI from a point on shore in Milliken State Park at

42°19.87'N, 083°01.65'W, proceeding South-Southeast approximately 450 yards to a point mid-river on the international boundary at 42°19.67'N, 083°01.57'N, then proceeding approximately 1.3 miles West-Southwest along the international boundary to a point mid-river at 42°19.28'N, 083°03.03'W, and then proceeding to a point on shore immediately West of the Joe Lewis arena at 42°19.45'N, 083°03.17'N, and then following the U.S. bank of the Detroit River upstream to the point of origin (NAD 83).

(b) Enforcement periods. The safety zone described in paragraph (a) of this section will be enforced from 12:30 p.m. until 6:30 p.m. on June 24, 25, and 26, 2016.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit (COTP) or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative on a case-by-case basis.

(3) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a

Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(4) Vessel operators must contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9560. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his on-scene representative.

Dated: 14 June 2016.

SCOTT B. LEMASTERS,
Captain, U.S. Coast Guard,
Captain of the Port Detroit.

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